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**BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. OT2008-13

SUSAN LYNN COX
Folsom, California

OAH No. 2009050594

Occupational Therapist License No. OT 7326

Respondent

DECISION DENYING PETITION FOR RECONSIDERATION

The California Board of Occupational Therapy has denied the motion requesting reconsideration of its April 21, 2010, Decision to revoke respondent's license. Occupational Therapist license number OT 7326 is hereby revoked.

The effective date of the Decision is May 20, 2010.

IT IS SO ORDERED.

Date: May 11, 2010

California Board of Occupational Therapy



HEATHER MARTIN
Executive Officer

**BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

SUSAN LYNN COX
Folsom, CA 95630

Occupational Therapist License
No. OT 7326

Respondent.

Case No. OT 2005-221

OAH No. 2009050594

ORDER GRANTING STAY OF EFFECTIVE DATE OF DECISION

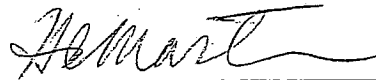
On April 19, 2010, Respondent filed a request for a stay of the effective date of that decision in order to file a Petition for Reconsideration.

Pursuant to Section 11521 of the Government Code, the Board hereby GRANTS a stay of the effective date of the Decision and Order in the above-stated case for thirty (30) days. The purpose of the delay is to allow Respondent additional time to submit a Petition for Reconsideration.

IT IS SO ORDERED.

Date: April 20, 2010

California Board of Occupational Therapy



HEATHER MARTIN
Executive Officer

**BEFORE THE
BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

SUSAN LYNN COX
Folsom, California 95630

Occupational Therapist License
No. OT 7326

Respondent.

Case No. OT 2005-221

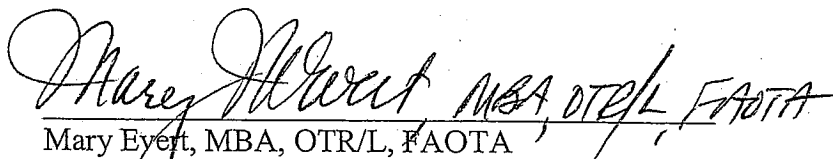
OAH No. 2009050594

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
Adopted by the Board of Occupational Therapy as its Decision in the above-entitled
matter.

This Decision shall become effective on APRIL 21, 2010.

IT IS SO ORDERED MARCH 22, 2010.


Mary Evert, MBA, OTR/L, FAOTA
President
California Board of Occupational Therapy

BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SUSAN LYNN COX
Folsom, California 95630

Occupational Therapist License
No. OT 7326

Respondent.

Case No. OT 2005-221

OAH No. 2009050594

PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings heard this matter on December 8, 2009, in Sacramento, California.

Kent D. Harris, Deputy Attorney General, represented complainant, Heather Martin.

Susan Lynn Cox (respondent) appeared and was represented by Stephen F. Mitchell, Attorney at Law.

The matter was submitted for decision on December 8, 2009.

FACTUAL FINDINGS

1. Complainant Heather Martin made the Accusation in her official capacity as Executive Officer of the California Board of Occupational Therapy (Board), Department of Consumer Affairs.
2. The Accusation was amended at hearing as follows: On page 4, paragraph 8.a., line 6: delete "June 22, 2003."
3. On December 9, 2003, the Board issued license number OT 7326 to respondent. The license will expire on September 30, 2010, unless renewed or revoked.

Respondent's License and Work History

4. Respondent graduated from Colorado State University in 1982, with a degree in occupational therapy. From 1982 to 1985, she worked in the hand clinic at Doctors Medical Center in Modesto. In 1985, respondent became certified by the American Occupational Therapy Certification Board, and she later became certified by the National Board for Certification in Occupational Therapy (NBCOT). In 1985, respondent worked for a short time as a hand therapist on an independent-contractor basis. From 1986 to 1998 or 1999, respondent and her then-husband operated Modesto Physical Therapy, Hand, and Upper Extremity Clinic in Modesto. Thereafter, respondent worked as an independent contractor performing occupational therapy at various locations for different physical therapy practices.

5. Respondent worked for Gold Bear Physical Therapy (GBPT) performing hand therapy as a subcontractor. According to Shelle Renee Dias, the business manager for GBPT, respondent worked approximately 30 hours per week, Monday, Wednesday, and Friday, from July 2001 to October 2001, for a total of approximately 500 hours. Bobby Ismail is the owner of GBPT. Neither Mr. Ismael nor Ms. Dias signed any form verifying respondent's work experience with GBPT.

6. Respondent worked as a hand therapist in the Turlock office of Payne-Murphy Physical Therapy Services from November 30, 2001, to March 29, 2002. According to Margaret Payne-Murphy, respondent worked a maximum of 328 hours during her tenure at Payne-Murphy Physical Therapy Services. Ms. Payne-Murphy confirmed that respondent did not work for Payne-Murphy Physical Therapy Services in 1999 or 2000.

7. Respondent worked for Dwight Peace Physical Therapy in 2002 and 2003, on exact dates not established by the evidence. According to Mr. Peace, respondent saw patients two to three days per week, and she did not work a full day on the days she was at the office. Respondent worked with patients with upper extremity problems, and did not limit her practice to hand therapy. Mr. Peace never signed a verification of employment form for respondent for any purpose, and did not discuss the matter of respondent applying to become a certified hand therapist with her after she ceased her employment relationship with his office. He did not authorize her to sign his name on any document at any time. Mr. Peace believes that respondent did not work 2,700 hours while performing services at Dwight Peace Physical Therapy. He testified that it "seems more accurate" that respondent worked a total of about 1,900 hours. Mr. Peace confirmed that respondent did not work for Dwight Peace Physical Therapy in 2000, and that she worked for Dwight Peace Physical Therapy after May of 2002, into 2003.

Failure to Hold Appropriate Credentials

8. In 2000, the California legislature passed a law requiring licensure of occupational therapists, to become effective on January 1, 2003. The Board was formed in 2001, and in March and April of 2002, Board staff sent over 9,400 applications for licensure

to individuals who were certified by the NBCOT who had California addresses. The Board made other efforts, through professional organizations, to notify individuals practicing as occupational therapists in California of the requirement that they become licensed by January 1, 2003, in order to continue practicing in California.

9. At hearing, respondent admitted that she worked at Dwight Peace Physical Therapy through January 2003. In February 2003, respondent's sister was diagnosed with brain cancer, and respondent stopped working in order to care for her sister and her sister's children. Respondent returned to work as an occupational therapist for approximately two weeks at Olivewood Physical Therapy in Merced in June 2003. Respondent testified that she was unaware of the requirement that she be licensed by the Board. After she was informed by the office manager that she needed to be licensed, she immediately ceased work and began the process to obtain her California license. Respondent did not thereafter work as an occupational therapist until her license was granted by the Board in December 2003.

10. By reason of the facts set forth in Findings 7, 8, and 9, respondent practiced as an occupational therapist without a license between January 1, 2003, and December 9, 2003.

11. The matters set forth in Finding 9, while not completely excusing respondent's conduct, are considered as factors in mitigation.

False Statements – Certified Hand Therapist Applications

12. On June 29, 2005, respondent submitted an application for examination to become certified as a certified hand therapist (CHT) with the Hand Therapy Certification Commission (HTCC). In connection with her 2005 HTCC application, respondent submitted an Employment Verification Form for CHT Candidates. The verification form notes that "[c]andidates in private practice may sign their own form. Proof of ownership/partnership in a private practice is required." The verification form states in part:

By signing below, I certify that the hours here are true and correct to the best of my knowledge and that I have personally verified them for accuracy. I am aware that my inaccurate or false representation of these hours may lead to penalties, including, but not limited to, HTCC's refusal to accept further verification from me.

For Self-Verification: In addition, I understand that if I am the candidate listed above and signing this form because I am in private practice, my inaccuracies or false representation of these hours may lead to penalties including, but not limited to, revocation or denial of my certification, recertification, or eligibility for certification.

13. The verification form submitted by respondent stated that she treated "100% upper quadrant patients 40+ hours per week 5-2002 thru 2003." The verification form further stated: "This employment represents 2,700 hours in Direct Practice Experience of hand therapy acquired between 5/02 and 12/03 (must be between 7/1/2000 and 6/30/2005)."

14. Respondent signed her name on the form, and printed her name below her signature. Respondent also forged the signature of Dwight Peace, RPT, and printed his name below the signature. As set forth in Finding 7, Mr. Peace denied signing any verification of employment form for respondent and did not authorize her to sign his name. In addition to the forged signature, the verification form contained false and misleading information, in that it overstated the number of hours respondent worked for Dwight Peace Physical Therapy by at least 800 hours, and it implied that respondent worked for Dwight Peace Physical Therapy throughout the entire year of 2003, when in fact she did not.

15. Respondent took the examination to become a CHT in November of 2005 and did not pass. Due to a problem with administration of the examination, respondent was eligible to take the test again in 2006.

16. On June 21, 2006, respondent submitted a CHT application for examination to the HTCC. In connection with her 2006 HTCC application, respondent submitted an Employment Verification Form for CHT Candidates.

17. The verification form submitted by respondent stated that she was a "contract hand therapist." The verification form further stated: "This employment represents 1,900 hours in Direct Practice Experience of hand therapy acquired between 7/01 and 7/03 (must be between 7/1/2000 and 6/30/2005)."

18. Respondent forged the signatures of Dwight Peace and Bobby Ismail and printed their names below the forged signatures. Mr. Ismail's name was misspelled "Bobbie Ishamil." As set forth in Findings 5 and 7, Mr. Ismail and Mr. Peace denied signing any verification of employment form for respondent, and neither authorized her to sign his name.

19. At hearing, respondent contended that, since she was an independent contractor working for Mr. Peace and Mr. Ismail, she could have filled out the employment verification forms herself and that her signing the names of Mr. Peace and Mr. Ismail on employment verification forms was inconsequential. This testimony was not persuasive. Respondent's conduct was misleading and dishonest. Respondent also claimed that she faxed the verification form to Mr. Peace several times in 2005 and that she ultimately spoke to him by telephone and he said "okay" when she told him she was going to sign the form herself. Mr. Peace denied these events took place. Respondent's testimony was not credible.

False Statements – Applications for Advanced Practice Approval

20. Respondent became employed as an occupational therapist at St. Joseph's Medical Center in Stockton in June of 2006.

21. On July 4, 2007, respondent signed and dated an Application for Advanced Practice Approval – Physical Agent Modalities, which she filed with the Board on July 9, 2007. On October 1, 2007, respondent signed and dated an Application for Advanced Practice Approval – Hand Therapy, which she filed with the Board on October 5, 2007.

22. Respondent signed each application under penalty of perjury, attesting as follows:

I hereby declare that I am the person named in this application and that I have read the complete application and know the contents thereof. **I declare under penalty of perjury of the laws of the State of California, that all of the information contained herein and evidence or other credentials submitted herewith are true and correct.** I understand that falsification or misrepresentation of any item or response on this application or any attachment hereto, is sufficient grounds for denial, suspension, or revocation of a license to practice as an occupational therapist in the State of California. (Emphasis in original)

23. In July of 2007, respondent approached her supervisor at St. Joseph's Medical Center, Michelle Marchetti, to have Ms. Marchetti sign two certification of experience forms which respondent submitted to the Board in connection with her applications for advanced practice approval in hand therapy and physical agent modalities. On each form, Ms. Marchetti filled out her name, work address, telephone number, license number, and signature. Each form was only one page in length. At hearing, Ms. Marchetti testified that she could not recall whether the information at the top of each form, pertaining to the number of hours of experience and dates the experience was acquired, was filled out at the time she signed the forms.

24. After respondent received the signed pages from Ms. Marchetti, respondent in each case attached a separate sheet which she had prepared, purporting to describe her on-the-job training as it related to the subject matter requirements in the advanced practice area for which approval was being sought. The two page documents, containing the page prepared by respondent and the page signed by Ms. Marchetti, were submitted to the Board as part of her applications for advance practice approval, as set forth in Finding 21. These documents were forged, in that they gave the appearance that they were prepared by Ms. Marchetti, when in fact they were not, and Ms. Marchetti had not reviewed or approved the narrative pages prepared by respondent.

25. The certification of experience for advance practice approval in physical agent modalities submitted by respondent to the Board contained some inaccurate statements, although Ms. Marchetti confirmed that "most of the information is correct." Ms. Marchetti stated that references in the narrative to "laser" are false, in that St. Joseph's Medical Center

did not have a laser at the facility. Ms. Marchetti felt that respondent exaggerated the frequency of some of activities she performed. In addition, the dates listed on the page signed by Ms. Marchetti during which the experience was purportedly acquired, June 1, 2005 to July 1, 2007, were incorrect, in that respondent did not begin her employment at St. Joseph's Medical Center until June of 2006.

26. The certification of experience for advance practice approval in hand therapy submitted by respondent to the Board contained numerous statements that were false and misleading or that could not be verified by Ms. Marchetti. According to Ms. Marchetti, the statement that respondent was "a member of our out-patient Hand Therapy team here at St. Joseph's Medical Center" was false, in that there was no such "team." Ms. Marchetti was not aware of the circumstances of respondent's initial training in hand therapy, if any, and did not know anyone by the name of Marilyn Dixon. Thus, Ms. Marchetti could not verify that respondent "was initially trained by Marilyn Dixon, of Modesto, a well-known and stellar Hand Therapy provider." Ms. Marchetti had no idea whether respondent "is an Ergonomic Assessment Specialist." Respondent did not perform ergonomic assessments for St. Joseph's Medical Center, and Ms. Marchetti could not verify the claims respondent made in the statement concerning her experience in that or other areas. Ms. Marchetti disagreed with the statement, "I can confidently confirm Susan's knowledge of all aspects of Hand Therapy including her ability to evaluate formulate and implement excellent treatment parameters," in that respondent did not do hand therapy on a regular basis at St. Joseph's Medical Center, so Ms. Marchetti could not verify her expertise. On the page signed by Ms. Marchetti, it stated: "This training represents 1200+ hours of experience in the advanced practice area acquired between 2/04 (month/day/year) and 7/07 (month/day/year). The dates and hours listed are incorrect, in that respondent did not begin her employment at St. Joseph's Medical Center until June of 2006.

Matters in Aggravation

27. In 2002, respondent was admonished by the HTCC for her use of the initials "CHT" after her name on client progress reports she prepared while working at Golden Bear Physical Therapy, thereby implying that she had been awarded the certified hand therapist credential when in fact she had not. Respondent explained her use of the initials as a reference to the business she and her husband operated, Central California Hand Therapy. However, respondent did not use the initials "CCHT;" rather, she used the initials "CHT." Respondent's explanation for her conduct lacked credibility and was further evidence of her attempts to inflate and exaggerate her qualifications, credentials, and experience.

28. On July 24, 2003, respondent submitted her application for licensure as an occupational therapist to the Board, which she signed under penalty of perjury on July 1, 2003. The application was incomplete, in that she failed to fill out Section V., Work/Experience in Occupational Therapy. By a letter dated July 25, 2003, the Board requested that she complete the work experience portion of the application. On July 28, 2003, respondent faxed the completed page to the Board. In addition to her co-ownership of Modesto Physical Therapy, respondent listed the following occupational therapy work

experience as an independent contractor: Dwight Peace & Associates in Turlock, from July 1, 2000 to May 2002; and Payne-Murphy Physical Therapy Services, from 1999 to 2000. Respondent did not list her employment with GBPT or Olivewood Physical Therapy on her license application.

29. Respondent's 2003 license application contained false and misleading information concerning her employment history, in that it incorrectly listed her dates of employment with Dwight Peace & Associates and Payne-Murphy Physical Therapy Services, and it omitted information that would have alerted the Board to the fact that respondent had worked as an occupational therapist after the requirement for licensure had gone into effect in January 2003 (Findings 7 and 9).

Respondent's Evidence

30. While respondent was employed at St. Joseph's Medical Center, she received awards and commendations from patients and co-workers attesting to her "consistent, positive caring actions." Respondent submitted letters of support, which were received in evidence and considered to the extent permitted Government Code section 11513, subdivision (d).¹ These letters attested to respondent's competency as an occupational therapist, as well as to her honesty; they expressed the belief that respondent would not intentionally provide false information to mislead the Board concerning her work experience.

31. The witnesses who testified at hearing concerning services provided by respondent reported that there were no consumer complaints in connection with respondent's occupational therapy treatment skills, and she was deemed competent.

32. With regard to discrepancies in the dates of her employment at various physical therapy offices, respondent attributed the inaccuracies to the fact that she was a poor record-keeper and was making "guesses" based on her best recollection. She also attributed her faulty recollection and incomplete submissions to the Board to the stress of being a single mother with three children, having to care for her terminally ill sister and her sister's children, and having to dissolve the business and personal relationship with her ex-husband.

33. Respondent is currently employed at Carmichael Care and Rehabilitation, performing general occupational therapy duties. She no longer specializes in hand therapy and is not seeking any advance practice approvals or specialty certifications. She is working well over 40 hours per week. She provides full financial support for her three children, two of whom are 20 years old, and one is age 17.

¹ Government Code section 11513, subdivision (d) states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

Costs

34. The Board certified that the following costs were incurred in connection with the investigation and prosecution of this Accusation through December 3, 2009:

Attorney General Costs

2008-2009	20.50 hours @ \$158 per hour	\$ 3,239.00
2009-2010	23.75 hours @ \$170 per hour	4,037.50

Investigator Costs

2007-2008	40.50 hours @ \$190 per hour	\$7,695.00
2008-2009	7.00 hours @ \$192 per hour	1,344.00
2009-2010	6.00 hours @ \$159 per hour	<u>954.00</u>

TOTAL COSTS INCURRED: \$17,269.50

35. In addition to the costs certified above, Deputy Attorney General Kent D. Harris submitted a declaration, in which he estimated that an additional 4.0 hours would be expended up to the commencement of the hearing, at a billing rate of \$170 per hour, for an additional cost to the Board of \$680. The costs incurred by the Board, in the total amount of \$17,949.50, were appropriate to the scope of the proceedings.

LEGAL CONCLUSIONS

Failure to Hold Appropriate Credentials

1. Business and Professions Code section 2570.28, subdivision (g), authorizes the Board to discipline a licensee for "[i]mpersonating a licensed practitioner." California Code of Regulations, title 16, section 4170, subdivision (d)(1), states:

(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.

(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.

2. Cause for license discipline exists pursuant to Business and Professions Code sections 2570.28, subdivision (g), in conjunction with California Code of Regulations, title 16, section 4170, subdivision (d)(1), in that respondent practiced as an occupational therapist without a license in 2003, as set forth in Findings 3, 7, 9, and 10.

False Statements in Connection with Application or Issuance of Licenses

3. Business and Professions Code section 2570.28, subdivision (d), authorizes the Board to discipline a licensee for "[m]aking or giving any false statement or information in connection with the application for issuance or renewal of a license." Business and Professions Code section 2570.28, subdivision (h), authorizes the Board to discipline a licensee for "[c]ommitting any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee."

4. By reason of the facts set forth in Findings 21 through 25, respondent made false statements in connection with her application for an advanced practice approval in the area of physical agent modalities, in that on July 4, 2007, respondent signed, under penalty of perjury, an application for advanced practice approval in the area of physical agent modalities that contained false information in the form of a forged certification of work experience containing incorrect information that was not documented by the certifier. Cause for license discipline exists pursuant to Business and Professions Code section 2570.28, subdivisions (d) and (h).

5. By reason of the facts set forth in Findings 21 through 24 and 26, respondent made false statements in connection with her application for an advanced practice approval in the area of physical agent modalities, in that on October 1, 2007, respondent signed, under penalty of perjury, an application for advanced practice approval in the area of hand therapy that contained false information in the form of a forged certification of work experience containing incorrect information that was not documented by the certifier. Cause for license discipline exists pursuant to Business and Professions Code section 2570.28, subdivisions (d) and (h).

6. By reason of the facts set forth in Findings 5, 7, and 12 through 19, respondent made false statements in connection with her application for examination to become certified as a CHT with the HTCC, in that on June 29, 2005, and June 21, 2006, respondent submitted applications to take the examination to become a CHT with HTCC that contained false information in the form of certifications of work experience with forged signatures. Cause for license discipline exists pursuant to Business and Professions Code section 2570.28, subdivisions (d) and (h).

False, Fraudulent or Deceptive Communication and Inaccurate Representation of Experience

7. California Code of Regulations, title 16, section 4170, states, in pertinent part:

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, certificate or limited permit issued by the board shall comply with the following ethical standards of practice:

[¶]...[¶]

(f) Occupational therapy practitioners shall provide accurate information about occupational therapy services.

(1) Occupational therapy practitioners shall accurately represent their credentials, qualifications, education, experience, training, and competence.

[¶]...[¶]

(3) Occupational therapy practitioners shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.

8. By reason of the facts set forth in Findings 12 through 19 and 21 through 26, respondent violated the ethical standards of practice for an occupational therapist by engaging in false and fraudulent communications, making deceptive statements and claims, and making inaccurate representations of her experience. Cause for license discipline exists pursuant to California Code of Regulations, title 16, section 4170, subdivision (f)(1) and (3).

Violation of Laws and Regulations

9. Business and Professions Code section 2570.28, subdivision (c), authorizes the Board to discipline a licensee for "[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter." By reason of the facts set forth in Findings 3, 5, 7, 9, 10, 12 through 19, and 21 through 26, and the matters set forth in Legal Conclusions 1 through 8, respondent violated Business and Professions Code section 2570.28, and California Code of Regulations, title 16, section 4170. Cause for license discipline exists pursuant to Business and Professions Code sections 2570.28, subdivision (c).

Disciplinary Considerations

10. Pursuant to Business and Professions Code section 4144, subdivision (a), the Board has adopted disciplinary guidelines (Guidelines). In determining whether revocation, suspension or probation is to be imposed in a given case, the Guidelines set forth the following factors to be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.

4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

11. Applying the Guidelines to the facts of this case, respondent's misconduct is serious, in that she has submitted documents to the Board under penalty of perjury that were false and misleading, and has submitted documents to the Board as well as to a national certifying organization that contained forgeries. There was no harm to a consumer or client as a result of her misconduct. With regard to her practice as an occupational therapist without a license, there were extenuating circumstances that caused her to be unaware of the licensure requirement, and she did initiate the licensing process after she was put on notice of her unlicensed status. However, the inaccuracies and deficiencies in the application submitted, along with her other dishonest conduct, demonstrate a pattern of dishonesty that goes far beyond mere inadvertence or "bad record-keeping." Respondent did not demonstrate that she is capable of taking corrective action to prevent recurrence of the misconduct.

12. Honesty has been determined to be a trait of extreme importance for health care professionals. (See, *Foster v. Board of Medical Quality Assurance* (1991) 227 Cal.App.3d 1606, 1610: intentional dishonesty "demonstrates a fundamental lack of moral character which is incompatible with the honesty required to properly maintain the doctor-patient relationship. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470; *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305).") Under all of the facts and circumstances, it would be contrary to the public interest to permit respondent to retain her license, even with probationary terms and conditions.

Costs

13. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.² Business and Professions Code section 125.3,

² California Code of Regulations, title 1, section 1042, implementing Business and Professions Code section 125.3, states:

subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

14. As set forth in Findings 34 and 35, the costs of investigation and enforcement claimed by the Board herein are in the amount of \$17,949.50. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, respondent was not successful in defending against any of the charges against her. Respondent did not have a

(a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.

(b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

(3) When the agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available.

(4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs.

(c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

subjective good faith belief in the merits of her position, and did not raise a colorable challenge to the proposed discipline. As set forth in Finding 33, respondent is the sole support of her family. Respondent did not raise objections to the cost declaration or her ability to make cost payments.

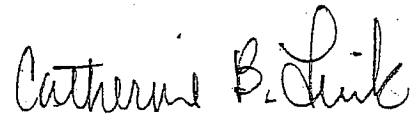
15. Under all of the facts and circumstances, the award of costs in the amount of \$17,949.50 is reasonable and appropriate. Payment of costs shall not be required unless and until respondent seeks reinstatement of her license.

ORDER

1. Occupational Therapist License No. OT 7326, issued to respondent Susan Lynn Cox, is revoked by reason of Legal Conclusions 1 through 12.

2. Respondent Susan Lynn Cox is ordered to pay to the Board the costs of investigation and prosecution of this matter, in the amount of \$17,949.50, pursuant to Legal Conclusions 13 through 15. However, costs shall not become due and payable until such time as respondent applies for reinstatement of her occupational therapist license. At that time, the Board shall consider an installment payment plan for respondent.

DATED: January 7, 2010.



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings